

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

FRANK'S CASING CREW AND RENTAL	§	
TOOLS, INC., AND FRANK'S	§	
INTERNATIONAL, INC.,	§	
Plaintiffs,	§	CIVIL ACTION NO. 2-07-CV-015 (TJW)
	§	
v.	§	
TESCO CORPORATION, AND TESCO	§	
CORPORATION (US),	§	
Defendants.	§	
&	§	
ROBERT APPLETON,	§	
Consolidated Plaintiff,	§	
v.	§	
FRANK'S CASING CREW AND RENTAL	§	
TOOLS, INC., AND FRANK'S	§	
INTERNATIONAL, INC.,	§	
Defendants.	§	

ORDER

Before the court is Plaintiffs' and Consolidated Defendants' Frank's Motion to Strike Certain (1) Invalidity Opinions of Tesco's Technical Expert and (2) Tesco's Amended Invalidity Contentions. (Dkt. No. 127). Plaintiffs ask the court to strike Tesco's "Amended Invalidity Contentions" served pursuant to local Patent Rule 3-6(a)(2)(A). Rule 3-6(a)(2)(A) allows a party opposing a claim of patent infringement to serve "Amended Invalidity Contentions" without leave of court when the party claiming infringement has served "Amended Infringement Contentions" pursuant to Rule 3-6(a)(1). It is undisputed that Frank's served such "Amended Infringement Contentions."

Frank's argues that for equitable considerations the court should strike Tesco's Amended Invalidity Contentions regardless of the Rule allowing them. Frank's cites Judge Clark's decision in *Finisar Corp. V. Direct TV Group, Inc.*, 424 F.Supp.2d 896 (E.D. Tex. 2006) for support of its proposition. This case differs from *Finisar*, however. The Plaintiff in *Finisar* had not actually served "Amended Infringement Contentions." Here, Frank's did serve "Amended Infringement Contentions," allowing Tesco to serve "Amended Invalidity Contentions." The rules do not require leave, or a showing of good cause or no prejudice for doing so. Further, Tesco's expert is allowed to rely on those "Amended Invalidity Contentions." The Motion, therefore, is DENIED.

SIGNED this 20th day of February, 2009.



T. JOHN WARD
UNITED STATES DISTRICT JUDGE